

AMENDED IN ASSEMBLY SEPTEMBER 4, 2003

AMENDED IN ASSEMBLY JUNE 27, 2003

AMENDED IN SENATE APRIL 10, 2003

**SENATE BILL**

**No. 288**

---

**Introduced by Senator Sher**

**(Coauthor: Senator Alarcon)**

*(Coauthors: Assembly Members Diaz, Firebaugh, Frommer, Laird,  
Nation, Nunez, and Pavley)*

February 19, 2003

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~~An act to amend Section 41652 of, and to add Chapter 4.5~~ *An act to add Chapter 4.5 (commencing with Section 42500) to Part 4 of Division 26 of, the Health and Safety Code, and to amend Section 9250.11 of the Vehicle Code, relating to air quality.*

LEGISLATIVE COUNSEL'S DIGEST

SB 288, as amended, Sher. Air quality: Protect California Air Act of 2003: *South Coast Air Quality Management District: air pollution control fees.*

(1) Existing law, the federal Clean Air Act, requires each major new and modified source of air pollution to undergo "new source review" to ensure that facilities install the best available control equipment, obtain offsets for any new emissions, and comply with any other requirement to ensure that the new and modified sources do not adversely affect air quality. On December 31, 2002, the Administrator of the United States Environmental Protection Agency promulgated regulations implementing the new source review program that ~~alter~~ *change* that program. Under the federal Clean Air Act, states may adopt air pollution control requirements that are more stringent than federal

requirements. Existing law designates the State Air Resources Board as the air pollution control agency responsible for the coordination of the activities of air pollution control districts and air quality management districts for the purposes of the federal Clean Air Act. Subject to the powers of the state board, the districts are required to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by nonvehicular emission sources under their jurisdiction. Each district is authorized to establish a permit system that requires, except as specified, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants, the person obtain a permit from the air pollution control officer of the district.

This bill would establish the Protect California Air Act of 2003. The bill would ~~require the state board and the districts to enforce and implement specified provisions of the Code of Federal Regulations pertaining to new source review, as they existed on December 30, 2002. The bill would provide that its provisions, and all regulations adopted pursuant to its provisions, apply retroactively to December 30, 2002. The bill would authorize the state board to prescribe a plan for a district if the state board determines the district plan to be unsatisfactory, and authorizes the state board to enforce the provisions of that plan if the district fails to do so.~~

~~The bill would authorize any person who proposes to own or operate a new source to request a district for one or more waivers from the requirements of these provisions with respect to any air pollutant in order to encourage the use of an innovative technological system of continuous emission reduction, and would authorize the district to grant a waiver if, after public notice and comment, it determines the proposed system meets specified criteria.~~

~~The bill would require the state implementation plan for the federal act to contain emission limitations and other measures that the state board determines may be necessary to prevent significant deterioration of air quality in each region designated as attainment or unclassifiable pursuant to federal law. The bill would require that in the case of sulfur dioxide and particulate matter, the state implementation plan contain measures assuring that maximum allowable increases over baseline concentrations and maximum allowable concentrations of the pollutant not be exceeded. The bill would specify the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over~~



~~the baseline concentration of the pollutant for class I, class II, and class III areas, as defined.~~

~~The bill would prohibit construction on a major emitting facility unless a permit has been issued that meets specified requirements, including that the permit has been reviewed under the provisions of the bill, interested parties have had the opportunity to comment, and the owner or operator of the facility demonstrates that emission from construction or operation of the facility will not cause, or contribute to, air pollution in excess of specified concentrations and standards. The bill would prohibit the issuance of a permit if the Federal Land Manager or other federal official provides specified findings to the district relating to the adverse impact of the facility on air quality. The bill would require the state board to adopt regulations at least as stringent as those adopted by the Administrator of the federal Environmental Protection Agency, that were in effect on December 30, 2002, to prevent the significant deterioration of air quality which would result from the emissions of hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides. The bill would require the state board or the district with jurisdiction to take those measures necessary to prevent the construction or modification of a major emitting facility, as defined, that does not conform to the provisions of the bill.~~

~~The bill would establish plan requirements for nonattainment areas, as defined and would require the provisions of the plan to include providing for the implementation of all reasonably available control measures as expeditiously as practicable, attainment of the national primary ambient air quality standards, inventories of actual emissions, and enforceable emissions limitations. The bill would also require the plan provisions to require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area.~~

~~The bill would authorize the issuance of permits to construct and operate if the permitting agency makes certain determinations pertaining to emissions of pollutants resulting from the new or modified source. The bill would provide that the owner or operator of a new or modified major stationary source may comply with any offset requirement under this act for increased emissions of any air pollutant only by obtaining emission reductions pursuant to existing provisions of state law.~~

~~The bill would set forth, for any area designated as a nonattainment area for national ambient air quality standards, specified offset~~



~~requirements. The bill would set forth the requirements for commencing a civil action to enforce an emission standard or limitation, as defined, or an order issued by the federal administrator, the state board, or a district with respect to an emission standard or limitation.~~

~~(2) Existing law makes a violation of any rule, regulation, permit, or order of the state board and a district a misdemeanor. By expanding the scope of a crime, this bill would impose a state-mandated local program. To the extent this bill would establish duties for districts it would impose a state-mandated local program.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason. *make legislative findings and declarations regarding those new federal regulations and their effect on the federal Clean Air Act, as implemented in California. It would declare the purposes of the bill to include the need to attain and maintain ambient air quality standards by the earliest practicable date, to protect public health and welfare from the adverse effects of air pollution, and to ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources.*~~

~~This bill would prohibit districts from amending or revising their new source review rules or regulations to be less stringent than those rules or regulations that existed on December 30, 2002, except under certain circumstances. It would require the state board to provide on its Web site, and in writing for purchase by the public, a copy of the federal new source review regulations as they read on December 30, 2002, and a related document.~~

~~(2) Existing law, until January 1, 2005, authorizes the South Coast Air Quality Management District to impose a \$1 fee on the renewal of registration of any motor vehicle in the district, and requires the district to utilize the revenues generated by the imposition of that fee to reduce air pollution from motor vehicles through the implementation of a clean-burning fuel program in that district.~~

~~This will would extend that authority until January 1, 2010.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes-no.~~



*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 41652 of the Health and Safety Code is~~  
2 ~~amended to read:~~

3     ~~41652. If, after a public hearing, the state board finds that the~~  
4 ~~nonattainment area plan approved by the district does not comply~~  
5 ~~with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401~~  
6 ~~et seq.), or with Chapter 4 (commencing with Section 42300), the~~  
7 ~~state board may adopt such revisions as necessary to comply with~~  
8 ~~such requirements, except as otherwise provided in Article 5.5~~  
9 ~~(commencing with Section 53098) of Chapter 1 of Part 1 of~~  
10 ~~Division 2 of Title 5 of the Government Code.~~

11     ~~SEC. 2.~~

12     ~~SECTION 1.~~ Chapter 4.5 (commencing with Section  
13 42500) is added to Part 4 of Division 26 of the Health and Safety  
14 Code, to read:

15  
16         CHAPTER 4.5. PROTECT CALIFORNIA AIR ACT OF 2003

17  
18             ~~Article 1. Findings, Declaration, and Intent~~

19  
20     42500. This chapter shall be known, and may be cited, as the  
21 Protect California Air Act of 2003.

22     ~~42501. The Legislature finds and declares all of the~~

23     42501. *The Legislature finds and declares all of the following:*

24         (a) *For over 25 years, the federal Clean Air Act (42 U.S.C. Sec.*  
25 *7401, et seq.) has required major new and modified sources of air*  
26 *pollution to be subject to a new source review program for*  
27 *nonattainment areas and for the prevention of significant*  
28 *deterioration, in order to ensure that those sources use the*  
29 *requisite level of emission control, offset any new emissions, and*  
30 *comply with other requirements, as a means of ensuring that those*  
31 *new and modified sources do not adversely affect air quality.*

32         (b) *Requiring controls and emission offsets for new and*  
33 *modified sources ensures that industrial growth does not result in*  
34 *unacceptable levels of air pollution and that existing sources*  
35 *operate more cleanly over time by applying emission controls*  
36 *when those sources are overhauled or upgraded. Without these*  
37 *limits, air quality would degrade over time, and industrial growth,*  
38 *critical to the economic health of the state, would be foreclosed.*

1     (c) *The new source review program has been a cornerstone of*  
2 *the state's efforts to reduce pollution from new and existing*  
3 *industrial sources by requiring those sources to use the requisite*  
4 *level of emission controls based on the attainment status of the area*  
5 *where the source is located.*

6     (d) *The U.S. Environmental Protection Agency (U.S. E.P.A.)*  
7 *initially promulgated, and subsequently has revised, the new*  
8 *source review program to carry out the requirements of the federal*  
9 *Clean Air Act for preconstruction review of new and modified*  
10 *sources of air pollutants by the states.*

11     (e) *On December 31, 2002, the U.S. E.P.A., under the direction*  
12 *of the President of the United States, promulgated regulations that*  
13 *substantially weaken the basic federal new source review program*  
14 *(67 Fed.Reg. 80186-80289 (Dec. 31, 2002)). In promulgating the*  
15 *regulatory amendments, the U.S. E.P.A. claims that the new source*  
16 *review program has impeded or resulted in the cancellation of*  
17 *projects that would maintain or improve reliability, efficiency, and*  
18 *safety. This claim is contradicted by California's experience under*  
19 *the new source review programs of the air pollution control and air*  
20 *quality management districts.*

21     (f) *The amendments promulgated December 31, 2002, will*  
22 *drastically reduce the circumstances under which modifications at*  
23 *an existing source would be subject to federal new source review.*  
24 *The U.S. E.P.A. has also proposed a rule that will change the*  
25 *definition of "routine maintenance, repair and replacement." If*  
26 *that rule is finalized, it will significantly worsen the situation.*

27     (g) *The newly revised and proposed federal new source review*  
28 *reneges on the promise of clean air embodied in the federal Clean*  
29 *Air Act, and threatens to undermine the air quality of the State of*  
30 *California and thereby threaten the health and safety of the people*  
31 *of the State of California.*

32     (h) *Section 107 of the federal Clean Air Act (42 U.S.C. Sec.*  
33 *7407) provides that the state has primary responsibility for*  
34 *meeting ambient air quality standards in all areas of the state, and*  
35 *that the means to achieve the standards shall be set out in the state*  
36 *implementation plan, or SIP.*

37     (i) *Section 116 of the federal Clean Air Act (42 U.S.C. Sec.*  
38 *7416) preserves the right of states to adopt air pollution control*  
39 *requirements that are more stringent than comparable federal*  
40 *requirements. Moreover, the recent revisions to the federal new*



1 source review regulations provide that the states may adopt  
2 permitting programs that are “at least as stringent” as the new  
3 federal “revised base program,” and that the federal regulations  
4 “certainly do not have the goal of ‘preempting’ State creativity or  
5 innovation.” (67 Fed.Reg. 80241 (Dec. 31, 2002)).

6 42502. The Legislature further finds and declares all of the  
7 following:

8 (a) The people of the State of California have a primary interest  
9 in safeguarding the air quality in the state from degradation and  
10 in ensuring the enhancement of the air quality of the state.

11 (b) Emissions from nonvehicular sources are a significant  
12 contributing factor to unhealthful levels of air pollution in  
13 California. These emissions must be controlled to protect public  
14 health and the environment, and to allow the economic benefits of  
15 new and expanded business in this state without compromising  
16 those important goals.

17 (c) Under state law, air quality management districts and air  
18 pollution control districts have primary responsibility for  
19 controlling air pollution caused by nonvehicular sources,  
20 including stationary sources. The primary mechanism for  
21 controlling pollution from new and modified stationary sources is  
22 the existing new source review program of the districts. The  
23 application of the new source review programs requires that all  
24 new and modified sources, unless specifically exempted, must  
25 apply control technology and offset emissions increases as a  
26 condition of receiving a permit.

27 (d) The districts generally require the application of the lowest  
28 achievable emission rate, also known as California BACT, to  
29 achieve the necessary level of emission control from new or  
30 modified sources.

31 (e) The requirement for California BACT, offsets, and other  
32 requirements are set out in the rules and regulations adopted by the  
33 districts to establish the new source review program. These rules  
34 and regulations, which typically are more stringent than the  
35 minimum requirements established by federal law, are reviewed  
36 and approved by the state board and transmitted to the U.S. E.P.A.  
37 for inclusion in the SIP.

38 (f) The districts have one of the most effective new source  
39 review programs in the nation, with requirements for advanced  
40 emission control technology on new and expanding sources as its

1 foundation. This technology-based program succeeds by requiring  
2 application of emission control technology at the time of  
3 construction or when a source undergoes a significant  
4 modification, which maximizes the emission reduction benefits  
5 and reduces costs.

6 (g) With this and other programs, California has been able to  
7 improve air quality despite increases in population, industrial  
8 output, and motor vehicle use. However, significant areas of the  
9 state still do not meet the federal or state ambient air quality  
10 standards, which are set at levels necessary to protect public health  
11 and welfare. Any rollback of the new source review program, as a  
12 result of the federal “reforms,” would exacerbate the continuing  
13 air pollution challenges faced by the state and delay attainment of  
14 the state and federal ambient air quality standards.

15 42503. The purposes of this chapter are all of the following:

16 (a) To attain and maintain state and federal ambient air quality  
17 standards by the earliest practicable date.

18 (b) To protect public health and welfare from any actual or  
19 potential adverse effect which reasonably may be anticipated to  
20 occur from air pollution.

21 (c) To preserve, protect and enhance the air quality in national  
22 parks, national wilderness areas, national monuments, national  
23 seashores, and other areas of special national or regional natural,  
24 recreational, scenic, or historic value.

25 (d) To ensure that economic growth will occur in a manner  
26 consistent with the preservation of existing clean air resources.

27 (e) To ensure that emissions from any source in the state will not  
28 interfere with any portion of the applicable implementation plan  
29 to prevent significant deterioration of air quality for this or any  
30 other state.

31 (f) To ensure that any decision to permit increased air pollution  
32 in any area to which this chapter applies is made only after careful  
33 evaluation of all the consequences of that decision and after  
34 adequate procedural opportunities for informed public  
35 participation in the decisionmaking process.

36 42504. (a) No air quality management district or air  
37 pollution control district may amend or revise its new source  
38 review rules or regulations to be less stringent than those that  
39 existed on December 30, 2002. If the state board finds, after a  
40 public hearing, that a district’s rules or regulations are not



1 *equivalent to or more stringent than the rules or regulations that*  
2 *existed on December 30, 2002, the state board shall promptly*  
3 *adopt for that district the rules or regulations that may be*  
4 *necessary to establish equivalency, consistent with subdivision (b).*

5 *(b) (1) In amending or revising its new source review rules or*  
6 *regulations, a district may not change any of the following that*  
7 *existed on December 30, 2002, if the amendments or revisions*  
8 *would exempt, relax or reduce the obligations of a stationary*  
9 *source for any of the requirements listed in paragraph (2):*

10 *(A) The applicability determination for new source review.*

11 *(B) The definition of modification, major modification, routine*  
12 *maintenance, or repair or replacement.*

13 *(C) The calculation methodology, thresholds or other*  
14 *procedures of new source review.*

15 *(D) Any definitions or requirements of the new source review*  
16 *regulations.*

17 *(2) (A) Any requirements to obtain all new source review or*  
18 *other permits to construct, prior to commencement of*  
19 *construction, for all new stationary sources, as well as existing*  
20 *stationary sources being modified (including any physical*  
21 *modification or change in the method of operation), maintained,*  
22 *repaired or replaced.*

23 *(B) Any requirements for best available control technology*  
24 *(BACT) for all new stationary sources, as well as existing*  
25 *stationary sources being modified, maintained, repaired or*  
26 *replaced.*

27 *(C) Any requirements for air quality impact analysis for all new*  
28 *stationary sources, as well as stationary sources being modified,*  
29 *maintained, repaired or replaced.*

30 *(D) Any requirements for recordkeeping, monitoring and*  
31 *reporting for all new stationary sources, as well as existing*  
32 *stationary sources being modified, maintained, repaired, or*  
33 *replaced in a manner that would make recordkeeping, monitoring,*  
34 *or reporting less representative, enforceable, or publicly*  
35 *accessible.*

36 *(E) Any requirements for regulating any air pollutant covered*  
37 *by the new source review rules and regulations.*

38 *(F) Any requirements for public participation, including a*  
39 *public comment period, public notification, public hearing, or*  
40 *other opportunities or forms of public participation, prior to*

1 issuance of permits to construct for all new stationary sources, as  
2 well as existing stationary sources being modified, maintained,  
3 repaired or replaced.

4 (c) In amending or revising its new source review rules or  
5 regulations, a district may change any of the items in paragraph  
6 (1) of subdivision (b) only if the change is more stringent than the  
7 new source review rules or regulations that existed on December  
8 30, 2002.

9 (d) Notwithstanding subdivisions (a), (b), and (c), a district  
10 may amend or revise a rule or regulation if a district board, at the  
11 time the amendments or revisions are adopted, makes its decision  
12 based upon substantial evidence in the record, the amendments or  
13 revisions are submitted to and approved by the state board after a  
14 public hearing, and each of the following conditions is met:

15 (1) The amended or revised rule or regulation will do one of the  
16 following:

17 (A) Will replace an existing rule or regulation that caused a risk  
18 to public health or safety from exposure to a toxic material, a  
19 dangerous condition, or an infectious disease with a rule or  
20 regulation that provides greater protection to public health or  
21 safety.

22 (B) Will replace an existing rule or regulation that has been  
23 found to be unworkable due to engineering or other technical  
24 problems with a rule or regulation that is effective.

25 (C) Will allow an amendment to an existing rule or regulation  
26 that otherwise will cause substantial hardship to a business,  
27 industry, or category of sources, if all of the following criteria are  
28 met:

29 (i) The amendment is narrowly tailored to relieve the identified  
30 hardship.

31 (ii) The district provides equivalent reductions in emissions of  
32 air contaminants to offset any increase in emissions of air  
33 contaminants.

34 (iii) All reductions in emissions of air contaminants are real,  
35 surplus, quantifiable, verifiable, enforceable, and timely. For the  
36 purposes of this clause, reductions are timely if they occur no more  
37 than three years prior to, and no more than three years following,  
38 the occurrence of the increase in emissions of air contaminants.

39 (iv) Information regarding the reductions in emissions of air  
40 contaminants is available to the public.

1     (D) *Is a temporary rule or regulation necessary to respond to*  
2 *an emergency consisting of a sudden, unexpected occurrence and*  
3 *demanding prompt action to prevent or mitigate loss of or damage*  
4 *to life, health, property, or essential surfaces and the temporary*  
5 *rule or regulation does not extend beyond the reasonably*  
6 *anticipated duration of the emergency.*

7     (E) *Will not, if the district is in attainment with all applicable*  
8 *national ambient air quality standards, impair or impede*  
9 *continued maintenance of those standards or progress toward*  
10 *achieving attainment of applicable state ambient air quality*  
11 *standards.*

12     (2) *The amended or revised rule or regulation will not exempt,*  
13 *relax, or reduce the obligation of any stationary source under the*  
14 *rules or regulations of the district, as those rules or regulations*  
15 *existed on December 30, 2002, to obtain a permit or to meet best*  
16 *available control technology requirements. This paragraph only*  
17 *applies to a source that constituted a major source under the rules*  
18 *or regulations of a district that existed on December 30, 2002, and*  
19 *does not apply to any individual best available control technology*  
20 *determination.*

21     (3) *The amended or revised rule or regulation is otherwise*  
22 *consistent with this division.*

23     (4) *The amended or revised rule or regulation is consistent with*  
24 *any guidance issued by the state board regarding environmental*  
25 *justice.*

26     42505. *For purposes of this chapter, each district's "existing*  
27 *new source review program" is comprised of those new source*  
28 *review rules and regulations for both nonattainment and*  
29 *prevention of significant deterioration for new, modified, repaired,*  
30 *or replaced sources that have been adopted by the district*  
31 *governing board on or prior to December 30, 2002, that have been*  
32 *submitted to the U.S. Environmental Protection Agency by the*  
33 *state board for inclusion in the state implementation plan and are*  
34 *pending approval or have been approved by the U.S.*  
35 *Environmental Protection Agency.*

36     42506. *In order to assist in interpreting district rules and*  
37 *regulations governing new source review for nonattainment areas*  
38 *and for prevention of significant deterioration, the state board*  
39 *shall provide on its Web site and in writing for purchase by the*  
40 *public, a copy of the federal new source review regulations as they*

1 *existed on December 30, 2002 and the United States*  
2 *Environmental Protection Agency's Guidance Document entitled,*  
3 *"New Source Review Workshop Manual: Prevention of Significant*  
4 *Deterioration and Nonattainment Area Permitting," (October*  
5 *1990 Draft).*

6 *42507. If any provision of this chapter or the application*  
7 *thereof to any person or circumstance is held invalid, it is the intent*  
8 *of the Legislature that the invalidity not affect other provisions or*  
9 *applications of the chapter that can be given effect without the*  
10 *invalid provision or application, and to this end the provisions of*  
11 *this chapter are severable.*

12 *SEC. 2. Section 9250.11 of the Vehicle Code is amended to*  
13 *read:*

14 9250.11. (a) In addition to any other fees specified in this  
15 code and the Revenue and Taxation Code, a fee of one dollar (\$1)  
16 may be imposed by the South Coast Air Quality Management  
17 District and shall be paid to the department, upon renewal of  
18 registration of any motor vehicle subject to Part 5 (commencing  
19 with Section 43000) of Division 26 of the Health and Safety Code  
20 and registered in the south coast district, except any vehicle that is  
21 expressly exempted under this code from the payment of  
22 registration fees.

23 (b) Prior to imposing fees pursuant to this section, the south  
24 coast district board shall approve the imposition of the fees  
25 through the adoption of a resolution by both a majority of the  
26 district board and a majority of the district board who are elected  
27 officials. After deducting all costs incurred pursuant to this  
28 section, the department shall distribute the additional fees  
29 collected pursuant to subdivision (a) to the south coast district,  
30 which shall use the fees to reduce air pollution from motor vehicles  
31 through implementation of Sections 40448.5 and 40448.5.1 of the  
32 Health and Safety Code.

33 (c) Any memorandum of understanding reached between the  
34 district and a county prior to the imposition of a one dollar (\$1) fee  
35 by a county shall remain in effect and govern the allocation of the  
36 funds generated in that county by that fee.

37 (d) The South Coast Air Quality Management District shall  
38 adopt accounting procedures to ensure that revenues from motor  
39 vehicle registration fees are not commingled with other program  
40 revenues.

(e) This section shall remain in effect only until January 1, 2005 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005 2010, deletes or extends that date.

**All matter omitted in this version of the bill appears in the bill as amended in the Assembly, June 27, 2003 (JR 11)**